

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DARRON LAVON SMILEY,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 2:19-CV-99-WHA
)	(wo)
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

This case is before the court on the Recommendation of the Magistrate Judge (Doc. #4) and the Petitioner's Objection thereto (Doc. #5).

Following an independent evaluation and *de novo* review of the file in this case, the court finds the objection to be without merit and due to be overruled.

Petitioner Smiley filed a *pro se* motion under 28 U.S.C. § 2255 challenging his 2007 conviction for possession of a firearm by a convicted felon. The Magistrate Judge recommended dismissal of Smiley's § 2255 motion as successive, without having received permission from the appellate court to file a second or successive petition. Doc. #4.

Smiley previously attacked the same conviction in a § 2255 motion filed in 2008. *See* Civil Action No. 2:08cv690-MEF. On September 30, 2008, this court entered a judgment denying that § 2255 motion and dismissing the action with prejudice. Civil Action No. 2:08cv690-MEF at Doc. #8. In the present § 2255 motion, which was filed on January 26, 2019, Smiley appears to challenge the adequacy of the legal representation he received from counsel in his criminal proceedings in this court.

In his Objection to the Magistrate Judge's Recommendation Smiley appears to argue that this case is not successive because he was unable to make a challenge to his 2007 conviction until the Alabama Court of Appeals issued an opinion in *Peake v. State*, 196 So. 3d 1249 (Ala. Crim. App. 2015). *Peake* involved a state conviction for manslaughter by vehicle that was reversed on a deprivation of the right to counsel issue. Smiley, however, was represented by counsel in his criminal proceedings in this court. The outcome in *Peake* would have no effect on Smiley's federal case. Also, because *Peake* involved a different defendant, the reversal of *Peake*'s conviction would not have an effect on the enhancement of Smiley's federal sentence.

Accordingly, the objection is OVERRULED, the court ADOPTS the Recommendation of the Magistrate Judge, and it is hereby

ORDERED that petition is DISMISSED with prejudice as successive.

Done this 4th day of March, 2019.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATE DISTRICT JUDGE